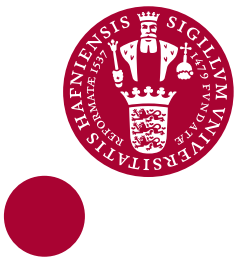

Book Review: The Law of Development Cooperation. A Comparative Analysis of the World Bank, the EU and Germany, by Philipp Dann. (Cambridge: Cambridge University Press, 2013). Pp 604.

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Aims
The Common Market Law Review is designed to function as a medium for the understanding and implementation of European Union Law within the Member States and elsewhere, and for the dissemination of legal thinking on European Union Law matters. It thus aims to meet the needs of both the academic and the practitioner. For practical reasons, English is used as the language of communication.

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The Common Market Law Review is designed to function as a medium for the understanding and analysis of European Union Law, and for the dissemination of legal thinking on all matters of European Union Law. It thus aims to meet the needs of both the academic and the practitioner. For practical reasons, English is used as the language of communication. The Common Market Law Review was established in 1963 in cooperation with the British Institute of International and Comparative Law and the Europa Instituut of the University of Leyden.

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Philipp Dann, *The Law of Development Cooperation. A Comparative Analysis of the World Bank, the EU and Germany.* Cambridge: Cambridge University Press, 2013. 604 pages. ISBN: 9781107020290. GBP 80.

Every year, very large sums of money are transferred as development assistance from the wealthier countries in the Global North to the less well-off Global South. For many years extensive research has been carried out with regards to these transfers of resources, but apart from human rights lawyers surprisingly few legal scholars have engaged with the topic. As a consequence scholarly legal writings are rather sparse in the field of development cooperation. Dann is one of the few scholars working on the law of development cooperation. In 2013 he published a major monograph, originating in his German *Habilitationsschrift*. The English edition makes it clear, however, that the original German book – *Entwicklungsrecht. Theorie und Dogmatik des Rechts der Entwicklungszusammenarbeit* – has been substantially revised and updated before being translated into English. On the back of the English edition, the reader is informed that "by focusing on the rules of development cooperation, [the book] puts forward a new perspective on the institutional law dealing with the process, instruments and organization of this cooperation. Placing the law in its theoretical and political context, it provides the first comparative study on the laws of foreign aid as a central field of global autonomy and asks how accountability, autonomy and human rights can be preserved while combating poverty". This delimitation is somewhat puzzling – first of all, because the book focuses on the institutional rather than on the substantive law of development cooperation. In the opinion of this reviewer, the substantive law of development cooperation has developed from being overwhelmingly political to, today, also having a perceptible legal connotation. Hence, already for this reason the substantive law of development cooperation would seem to be worth examining. In contrast, the institutional aspects of international development cooperation have always had an appreciable legal connotation (albeit clearly influenced by the

different political winds that have been blowing). This is not to say that the institutional aspects do not also deserve close scrutiny, but arguably if the choice were to be between the substantive and the institutional aspects, the former would seem to be the most attractive for a legal researcher looking for virgin territory waiting to be explored.

The book's *raison d'être* is presented at pages 1–2. Here the author explains that the aim is "[t]o understand converging as well as divergent elements [organizing and structuring development cooperation] and to analyse them critically". This the book does, through a "vertical comparison of national, supranational and international regimes to understand" the law of development cooperation. To this end the author has chosen to focus on the relevant laws of the World Bank, the European Union and Germany. With regard to the choice of these three donors, the author "contends that beyond the obvious differences in the nature of these actors, there is convergence in the general structures of their laws organizing and structuring development cooperation". In other words, through a comparative legal analysis of Germany, the EU and the World Bank, the author will make general statements about the law of development cooperation (as aptly reflected in the book's title). As a reviewer it is my task to ask whether this is feasible? Is it possible to make sweeping statements about the law of development cooperation without including the United States, without including Great Britain, without including France, without including the Scandinavian countries and the Netherlands; all of which have played important roles in the field of development cooperation and its regulation? And certainly they have not played less important roles than has Germany. In the contemporary world it would also have seemed natural to include new donors such as China and Qatar in the examination; at least if we take a broader approach to development cooperation than the narrow one established through the OECD's definition of "official development assistance" (ODA). Indeed, in the same vein it would probably have made the book more aligned with the realities of the world of today if Dann had ventured to broaden his examination so far as to also cover private transfers (e.g. remittances and private sector aid). Dann however excludes such a broader approach by delimiting his study to the provision of "public funds and hence the category of ODA as it is defined by the OECD" (p. 13).

Another issue which arguably deserved more thorough attention is the handling of humanitarian assistance in the context of development cooperation. Whereas Dann's book covers both types of assistance, it would have seemed recommendable if the readers were made aware more explicitly that different legal schemes apply. This is first of all the case with respect to the substantive rules, but the differences also impact on the institutional regulation. Perhaps one way whereby the difference between humanitarian aid and development assistance could have been bridged would have been by adding a "classic humanitarian aid actor" to the three actors otherwise covered (i.e. an actor that is almost exclusively active in the field of humanitarian aid).

The book constitutes three parts. Thus, following a general introduction to the work, part I provides approximately 100 pages under the heading "Institutional and intellectual history of development cooperation". In part II the reader is offered about 150 pages concerning the "Constitutional foundations of the law of development cooperation". And part III provides us with almost 200 pages on the "Administrative law of development cooperation".

Part I essentially provides a very detailed historical account. Whether one likes such a detailed, descriptive account is probably a question of personal preferences. In the opinion of the present reviewer, this kind of account is only justified if it serves a purpose towards the book's overall objective. Unfortunately, it is difficult to see where the author draws on the account given in part I in the two subsequent parts of the book.

In part II, Chapter 4, i.e. about halfway through the work, Dann turns to "principles of the law of development cooperation". On the very first page he identifies four "paramount" concepts – or principles: (i) development, (ii) collective autonomy, (iii) individual autonomy, and (iv) coherence and efficiency. On the second page of Chapter 4 he observes that "[t]hese four principles have shaped the law of development cooperation and open four perspectives on relevant norms." And he continues: "They help to bring order to diversity of rules and mechanisms, and pose their own specific questions to the law. They transform established

general principles of international law into field-specific sectorial principles of development cooperation law. At the same time, there might also be tensions between them.…" Most of the remaining part of the chapter provides an examination of "the individual substance of these principles and highlight areas of tension". Admittedly, this bold approach left me somewhat baffled. Thus on the face of it, Dann first identifies four principles that, according to him, have shaped the law of development cooperation – but without carrying out anything even remotely resembling a dedicated examination of (or a justification for the existence of) the four principles. Having simply identified the principles, he goes on examine their substance. Somehow this does not add up. Whereas the subsequent examinations of the substance of the four identified principles (as well as the examinations that follow in the book's part III) to some extent support the identification of the four principles, it still remains that there does not appear to be a thorough and convincing examination leading to them being singled out as *the four guiding principles* in the law of development cooperation. In this context, an important question is whether Dann is right in his identification of the four principles? Duly answering this question basically presupposes that we can test Dann's singling out of the four principles; but this is impossible without access to the examination. This means, to give but one illustration, that we do not know why Dann has found that the do-no-harm principle does not figure amongst the guiding principles.

The presentation of the substance of the four principles is followed by five chapters making up the book's Part III on administrative law of development cooperation. Here the book's subtitle (*A comparative analysis of the World Bank, the EU and Germany)* is given flesh and blood. Dann examines the legal aspects of different ways of providing official development assistance (ODA) as well as the accountability in the transfers of official development assistance. The examinations are thorough although they suffer from the fact that Dann bases himself on only the three actors listed above. Indeed, at times the author acknowledges himself the inherent limitation in this (e.g. p. 429).

As stated in the introduction of this review, Dann is one of the few scholars working in the field of the law of development cooperation. Moreover, a volume of over 500 pages dedicated to the law of development cooperation is a rare occurrence and therefore must be applauded. As also observed above the English-language work was based on Dann's German thesis. Translating a work from one language into another correctly is difficult. The task becomes even more challenging if the translator must also ensure that the translated work does not "retain the linguistic tone" of its original, and the translation requires insight into complex legal and political issues, requiring thorough knowledge of the applicable specialized terminology. Despite these very considerable challenges, the English edition of the book is an excellent translation. Both Dann and the translator, Andrew Hammel, are to be commended for an impressive translation of the work into English.

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